

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KELLIE DEETER-LARSEN, et al.,

Plaintiffs,

v.

WHATCOM HUMANE SOCIETY, et al.,

Defendants.

CASE NO. C18-300 RAJ

ORDER

This matter comes before the Court on Defendants Whatcom Humane Society, Laura A. Clark, and Rebecca Crowley’s (collectively, “Defendants”) Motion to Dismiss And/Or Bar Plaintiffs’ Defamation Damages. Dkt. # 28 (“Motion”). Plaintiffs oppose, and Defendants have filed a Reply. Dkt. ## 32, 33. For the reasons that follow, the Court **GRANTS IN PART AND DENIES IN PART** Defendants’ Motion. Dkt. # 28.

I. BACKGROUND

The following factual allegations are taken from Plaintiffs’ Complaint, which are assumed to be true for the purposes of this motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007).

Plaintiffs operated a pig farm in Whatcom County. Dkt. # 1 at p. 2, ¶ 9. Plaintiffs housed a number of animals on their farm, including multiple pigs, horses, and dogs. *Id.* at ¶¶ 11-12. Beginning in late 2015 and extending to 2016, Defendant Rebecca Crowley

1 of the Whatcom Humane Society made repeated visits to Plaintiffs' farm to investigate
2 the treatment of the animals. *Id.* During Ms. Crowley's visits, she took photos of
3 Plaintiffs' property. *Id.* On March 2017, Whatcom Humane Society seized all of the
4 animals from Plaintiffs' farm, allegedly after learning that Plaintiffs were feeding the
5 animals in a way that "did not align with the Whatcom Humane Societies [sic] beliefs on
6 what feed was appropriate for animals to consume." *Id.* at p. 3, ¶ 13. Plaintiffs allege
7 that Whatcom Humane Society ordered the pigs seized to be euthanized, and made some
8 statements regarding Plaintiffs on Facebook and through e-mails. *Id.* at ¶ 16. Plaintiffs
9 do not explain what these statements were, who made them, when they were made, or in
10 what form. *Id.*

11 On February 27, 2018, Plaintiffs filed this lawsuit against Defendants Whatcom
12 Humane Society, Laura A. Clark, Whatcom County, Rebecca Crowley, Washington State
13 Department of Agriculture, and Amber Itle. Dkt. # 1. Plaintiffs' Complaint asserts
14 eighteen causes of action, one of which is for defamation. *Id.* at p. 6. In total, Plaintiffs'
15 defamation claim reads:

16 **CLAIM VII**
17 (Defamation)

- 18 36. Plaintiff restates and re-alleges the allegations set forth in paragraphs 1-23 above
19 as if fully set forth herein.
- 20 37. By doing the acts described above, Whatcom Humane Society made a false
statement of fact, of or concerning the Plaintiff, which was published to 3rd
persons, and caused a reputational injury to the Plaintiff.

21 *Id.* at ¶¶ 36-37. On May 11, 2018, Defendants Whatcom Humane Society, Laura A.
22 Clark, and Rebecca Crowley filed this Motion to Dismiss And/Or Bar Plaintiffs'
23 Defamation Damages pursuant to RCW 7.96 et seq. Dkt. # 28. Plaintiffs opposed, and
24 Defendants filed a Reply. Dkt. ## 32, 33.

II. DISCUSSION

Defendants have not provided a legal standard for which to adjudicate its Motion; accordingly, the Court construes this Motion as a motion to dismiss under Fed. R. Civ. P. 12(b)(6). Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a pleading for failure to state a claim. The rule requires the court to assume the truth of the complaint's factual allegations and credit all reasonable inferences arising from those allegations. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A complaint fails to state a claim if it does not "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although the Court must accept as true a complaint's well-pleaded facts, "conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper motion to dismiss." *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007). Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

A. The Court Dismisses Plaintiffs' Defamation Claim

Defendants move to dismiss Plaintiffs' defamation claim. Dkt. # 28. To plead defamation under Washington law, a plaintiff must show four essential elements: falsity, an unprivileged communication, fault, and damages. *Mark v. Seattle Times*, 96 Wash. 2d 473, 486 (1981). Defendants argue that Plaintiffs' Complaint ignores Washington statutory prerequisites to the filing of a defamation claim, as set forth in RCW 7.96. Dkt. # 28 at 7-9. That statute states that a person may maintain an action for defamation "only if the person has made a timely and adequate request for correction or clarification from the defendant or the defendant has made a correction or clarification." RCW 7.96.040(1).

1 Such a request is “adequate” if, *inter alia*, it “[s]pecifies with particularity the statement
2 alleged to be false and defamatory or otherwise actionable and, to the extent known, the
3 time and place of publication; [a]lleges the defamatory meaning of the statement; [and]
4 [s]pecifies the circumstances giving rise to any defamatory meaning of the statement
5 which arises from other than the express language of the publication.” RCW 7.96.040(3).

6 Plaintiffs do not contest that they failed to follow the procedures set forth in RCW
7 7.96 for a state level defamation claim. Dkt. # 32. Moreover, the Complaint fails to give
8 Whatcom Humane Society notice as to what exactly they are being accused of, as it fails
9 to state what false statements were made, when, or by whom. The defamation cause of
10 action pleads only a generic allegation of defamation in a conclusory manner, which is
11 insufficient under RCW 7.96, and is insufficient to state a claim for defamation under
12 Washington law.

13 Plaintiffs do not seem to contest that they failed to state a defamation claim under
14 Washington law. Plaintiffs’ only response to Defendants’ Motion is to argue that
15 Plaintiffs’ Complaint did not contain a defamation claim under Washington law, but
16 rather “only a federal defamation claim under 1983.” Dkt. # 32 at 2. Plaintiffs argue that
17 Defendants’ Motion should be denied because it attempts to dismiss a nonexistent claim.
18 *Id.* The Court is unpersuaded by this argument; at the very least, Plaintiffs’ Complaint is
19 ambiguous as to whether it arises under state or federal law. Plaintiffs’ defamation claim
20 contains no reference to 42 U.S.C. § 1983. Dkt. # 1 at p. 6, ¶¶ 36-37. Although Plaintiffs
21 cite Section 1983 in reference to other claims, they do not cite this statute in reference to
22 their defamation claim. *See, e.g., id.* at pp. 4-5, ¶¶ 26-27. It is not clear to the Court
23 whether Plaintiffs’ two-paragraph defamation claim, which does not cite any federal
24 statute, arises under federal or state law. *Cf. Stone-Molloy v. Midland Funding LLC*, No.
25 215CV08017ODWAJWX, 2015 WL 6159104, at *1 (C.D. Cal. Oct. 19, 2015) (“Plaintiff
26 does not cite a federal statute or use language that substantially tracks the language of a
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1 federal statute, and thus it is not clear that she is trying to state a claim under federal
2 law.”).

3 Defendants argue that even if Plaintiffs’ defamation claim is construed as one
4 under 42 U.S.C. § 1983, Plaintiffs still fail to state a claim. Dkt. # 33 at 4-8. The Court
5 agrees. Allegations of defamation alone do not state a Section 1983 claim. *Paul v.*
6 *Davis*, 424 U.S. 693, 701-10 (1976). A claim under Section 1983 for defamation can
7 only proceed if plaintiff is subjected to “stigma plus”; i.e., if the state makes a charge
8 against [a plaintiff] that might seriously damage his standing and associations in the
9 community,” and “1) the accuracy of the charge is contested, 2) there is some public
10 disclosure of the charge, and 3) it is made in connection with the termination of
11 employment or the alteration of some right or status recognized by state law.” *Wenger v.*
12 *Monroe*, 282 F.3d 1068, 1074 (9th Cir. 2002), *as amended on denial of reh'g and reh'g*
13 *en banc* (Apr. 17, 2002) (citing *Llamas v. Butte Community College Dist.*, 238 F.3d 1123,
14 1129 (9th Cir. 2001)); *see also Ulrich v. City & Cty. of San Francisco*, 308 F.3d 968, 982
15 (9th Cir. 2002). Damage to reputation alone is not actionable under Section 1983. *Hart*
16 *v. Parks*, 450 F.3d 1059, 1069 (9th Cir. 2006).

17 Here, Plaintiffs’ Complaint alleges that Whatcom Humane Society made some
18 unspecified “public posts on Facebook and via emails with false and defamatory
19 statements regarding the treatment of the animals by the owners,” but the only harm they
20 allege is that the statements “were harmful to Plaintiffs [sic] reputation.” Dkt. # 1 at p. 3,
21 ¶ 16; *see also id.* at p. 6, ¶ 37 (alleging only “reputational injury to the Plaintiff.”).
22 Plaintiffs do not state what these alleged statements were, or how they were false.
23 Moreover, the Complaint contains no allegation that Plaintiffs were deprived of any
24 “recognizable property or liberty interest” as a result of the unidentified and allegedly
25 defamatory statements.

1 The Court cannot readily discern from Plaintiffs' Complaint either the alleged
2 defamatory statements or the "plus" element of Plaintiffs' purported "stigma plus"
3 federal defamation claim. Accordingly, the Court finds that Plaintiffs have failed to state
4 a defamation claim under either federal or state law. The Court **GRANTS** Defendants'
5 Motion to the extent it seeks to dismiss Plaintiffs' defamation claim.

6 **B. The Court Grants Plaintiffs Leave to Amend**

7 In dismissing Plaintiffs' defamation claim, the Court considers whether to grant
8 Plaintiffs leave to amend. "The court should freely give leave [to amend pleadings] when
9 justice so requires." Fed. R. Civ. P. 15(a)(2). To determine whether justice so requires
10 leave to amend, the Court considers "the presence or absence of undue delay, bad faith,
11 dilatory motive, repeated failure to cure deficiencies by previous amendments, undue
12 prejudice to the opposing party and futility of the proposed amendment." *Moore v.*
13 *Kayport Package Exp., Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). The Court believes that
14 although Plaintiffs may ultimately be precluded from asserting a defamation claim under
15 Washington law, it is too early to tell whether a defamation claim arising under federal
16 law would be futile. The Court will thus grant Plaintiffs one opportunity to amend their
17 defamation claim within fourteen (14) days from this Order. If Plaintiffs do not make
18 any amended filing within this timeframe, or if their amended pleading fails to address
19 the deficiencies discussed above, the Court will dismiss Plaintiffs' defamation claim with
20 prejudice.

21 Defendants argue that because Plaintiffs failed to respond to a demand for
22 information made under RCW 7.96.050, Plaintiffs are barred from seeking defamation
23 damages. Dkt. # 28 at 9. The Court believes this request is premature, because
24 Plaintiffs' amended pleading may still be able to assert a defamation claim under federal
25 law, and Defendants have cited no cases or authorities applying RCW 7.96.050 to
26 defamation claims arising under federal law. Accordingly, at this time the Court will

1 **DENY** Defendants' Motion to the extent it seeks to prohibit Plaintiffs from seeking
2 defamation damages of any sort. Should Plaintiffs' amended defamation claim suffer
3 from similar defects, Defendants may renew their request to bar Plaintiffs' defamation
4 damages.

5 **III. CONCLUSION**

6 For all the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN**
7 **PART** Defendants' Motion. Dkt. # 28. The Court **DISMISSES** Plaintiffs' defamation
8 claim (Count VII). Dkt. # 28. Plaintiffs are given leave to amend their defamation claim
9 within fourteen (14) days of the date of this order. If Plaintiff fails to timely comply with
10 this Order by filing an amended complaint that states a valid defamation claim, the Court
11 will dismiss the claim without leave to amend. The Court **DENIES** Defendants' request
12 to bar Plaintiffs from seeking defamation damages at this time.

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14 DATED this 12th day of October, 2018.

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18 The Honorable Richard A. Jones
19 United States District Judge
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